

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 22 June 2005**

Case No. 2005-LCA-10

ADMINISTRATOR, WAGE AND HOUR DIVISION,  
Prosecuting Party,

v.

KONKAN BROTHERS, INC.  
d/b/a SITAR RESTAURANT,  
Respondent.

Before: Thomas F. Phalen, Jr.  
Administrative Law Judge

**DECISION AND ORDER APPROVING SETTLEMENT  
AGREEMENT AND CONSENT FINDINGS**

This proceeding arises under the Immigration and Nationality Act (INA), and implementing regulations at 8 USC §§ 1101(a)(15)(H)(1)(b), 1182(n), 1184; 29 C.F.R. § 507.700 et seq., 20 C.F.R. Part 655, Subparts H and I. This case involves the labor condition applications and requirements for employers using aliens on H-1B visas in specialty occupations.

Through an order dated May 10, 2005, a formal hearing is scheduled for July 6, 2005. This hearing was scheduled to be held in Cincinnati, Ohio. However, on June 6, 2005, the parties notified the undersigned that they had reached a settlement. The parties submitted a settlement agreement and consent findings for the undersigned's approval.

The undersigned received the original executed settlement agreements between Complainant and Respondent, and a copy of the agreement is attached hereto and made a part of this order.

The agreement states the following:

- 1) Konkani Brothers agrees to pay, in full and complete settlement of all monetary issues raised in the Administrator's Determination Letter addressing Konkani Brothers' payment of requisite wages in this proceeding, the sum of \$15,191.48, representing an agreed amount of back wages to be paid to the H-1B non-immigrant, Harold H. D'Souza and pay a civil money penalty to the U.S. Department of Labor Wage and Hour Division in the amount of \$1,000.00.

- 2) The provisions of this Settlement Agreement relative to the payment of back wages shall be deemed satisfied when Konkan Brothers delivers to the Administrator a certified check, in an amount equal to \$15,191.48, made payable to the Wage-Hour Division/U.S. Department of Labor and sent to the following address: United States Department of Labor, P. O. Box 845498, Dallas, Texas 75284-5498. The back wage payment made by Konkan Brothers shall be made free and clear, within the meaning of 29 CFR § 531.35. A copy of the certified check shall be forwarded to counsel for the Administrator.
- 3) The provisions of this Settlement Agreement relative to the payment of the civil money penalty shall be deemed satisfied when Konkan Brothers deliver to the Administrator a certified check, in an amount equal to \$1,000.00, made payable to the Wage-Hour Division/US Department of Labor and sent to the following address: Office of the Solicitor, United States Department of Labor, 1240 East 9<sup>th</sup> Street, Room 881, Cleveland, Ohio 44199. The civil money penalty made by Konkan Brothers shall be made free and clear, within the meaning of CFR § 531.35.
- 4) This Settlement Agreement resolves all issues raised by the Administrator's Determination Letter of December 21, 2004 with respect to Konkan Brothers. Konkan Brothers further agrees to comply with the provisions of the INA and the applicable regulations in the future with respect to Konkan Brothers' petitioning for and employing H-1B non-immigrants.
- 5) Each party agrees to bear its own costs, attorney's fees and other expenses incurred by such party in connection with any stage of this proceeding to date with no costs, including, but not limited to, any and all costs referenced under the Equal Access to Justice Act, as amended.

The agreement includes a number of administrative and protective provisions. The parties agree that this settlement, in no way, constitutes an admission of liability. In addition, it releases the parties from future liability concerning any past act, including the circumstance that gave rise to this issue. Furthermore, the agreement provides remedies for breach, including a right to damages for the non-breaching party. Finally, the agreement includes a number of miscellaneous provisions related to filing, assignment, and general construction, with which I have no objection.

After reviewing the settlement agreement, the undersigned finds the agreement to be fair and reasonable. 29 C.F.R. § 18.9(d). Therefore,

## **ORDER**

IT IS ORDERED that, absent a request for review pursuant to 29 C.F.R. § 24.8:

- (1) the settlement agreement be, and hereby is APPROVED; and
- (2) the complaint of Konkan Brothers, Inc., d/b/a Sitar Restaurant be, and hereby is DISMISSED WITH PREJUDICE.

**A**

THOMAS F. PHALEN, JR.  
ADMINISTRATIVE LAW JUDGE

**NOTICE OF APPEAL RIGHTS:** Pursuant to 20 CFR § 655.845, any party dissatisfied with this Decision and Order may appeal it to the Administrative Review Board, United States Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, NW, Washington, DC 20210, by filing a petition to review the Decision and Order. The petition for review must be received by the Administrative Review Board within 30 calendar days of the date of the Decision and Order. Copies of the petition shall be served on all parties and on the administrative law judge.